

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
SOUTHERN BROADCASTING )  
& INVESTMENTS )  
Licensee of WBTY(FM), Homerville, Georgia )  
)  
and )  
)  
ALBERT LEON BROOKS )  
Licensee of WVGA(FM), Lakeland, Georgia )

MM Docket No. 90-214

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Mass Media Bureau

**REPLY TO OPPOSITION TO EMERGENCY REQUEST FOR ORDER TO  
REQUIRE STATION WBTY TO CHANGE CHANNELS OR TO DELETE  
CONDITION ON CONSTRUCTION PERMIT AND/OR  
SPECIAL TEMPORARY AUTHORITY  
AND  
CONDITIONAL REQUEST TO REVOKE LICENSE OF WVGA**

Jesup Broadcasting Corp. ("JBC"), licensee of WIFO-FM, Jesup, Georgia, respectfully replies to the "Opposition to Emergency Request for Order to Require Station WBTY to Change Channels or to Delete Condition on Construction Permit and/or Special Temporary Authority" filed November 9, 2000, by Southern Broadcasting & Investments ("Southern"), licensee of WBTY(FM), Homerville, Georgia.<sup>1</sup>

Based on a review of Southern's Opposition, JBC widens the scope of its Request to suggest that the Commission set a deadline for the licensee of WVGA to reimburse Southern or face revocation of WVGA's license. In support, the following is shown:

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<sup>1</sup> On November 27, 2000, JBC filed a Motion for Extension of Time to December 4, 2000, within which to respond to Southern's Opposition.

Southern has responded to JBC's March 28, 2000, Emergency Request that asked the Chief, Mass Media Bureau, to order Southern to cease broadcasting on Channel 288A and begin operation on Channel 254A as ordered in the *Report and Order* in MM Docket No. 90-214. See Memorandum Opinion and Order, *Homerville, Lakeland and Statenville, Georgia*, 8 FCC Rcd 2953 (Policy and Rules Division, April 30, 1993) ("Change Order").<sup>2</sup> JBC asked the Chief to authorize JBC to begin operating WIFO-FM on Channel 288C3 notwithstanding WBTY remaining on Channel 288A.<sup>3</sup>

Because WBTY has failed to change channels, WIFO-FM has been prevented for three years from constructing its upgraded facilities.<sup>4</sup>

In its Opposition, Southern states that it has "no quarrel with [JBC]." Southern explains that it has not changed channels because the licensee of WVGA(FM), Lakeland, Georgia, Albert Leon Brooks ("Brooks") has not yet reimbursed Southern, as was promised in MM Docket No. 90-214 by WVGA's former licensee.<sup>5</sup> Southern argues that it is willing to change its frequency, but that Southern has not been able to make arrangements with Brooks to reimburse Southern. Southern argues that it would be grossly unfair to Southern's principals to "front" the costs of changing the channels since Southern will receive no benefit from the channel change. Southern

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<sup>2</sup> JBC holds a construction permit to upgrade WIFO-FM to Class C3 on Channel 288C3 (File No. BPH-961029IF) ..JBC is ready, willing and able to construct WIFO-FM's new facilities, however, because of the refusal of WBTY, Homerville, Georgia, to vacate Channel 288A, WIFO-FM cannot construct its Class C3 facilities.

<sup>3</sup> WBTY is still operating on Channel 288A. It must relocate to Channel 254A in order to clear the operation of Channel 288C3 at Jesup, Georgia. Until WBTY changes channels, WIFO-FM cannot increase power and operate on Channel 288A. In MM Docket No. 90-214, the license of WBTY was modified for operation on Channel 254A. The licensee of WVGA(FM), Lakeland, Georgia, agreed to reimburse the licensee of WBTY for the necessary expenses involved in the change of channels (See Change Order, *supra*, at paragraph 13).

<sup>4</sup> By letter dated November 20, 2000, the Commission tolled the expiration of WIFO-FM's permit pending resolution of this proceeding.

<sup>5</sup> Lakeland Broadcasting, Inc.

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suggests JBC take this up with Brooks, but states that Southern's counsel intends to pursue Brooks to collect the required funds.

In its Emergency Request, JBC cited *Letter to Gary S. Smithwick, Esq. and Mark N. Lipp, Esq.*, released January 12, 1998, where the Assistant Chief, Mass Media Bureau, ordered the licensee of KIMY(FM), Watonga, Oklahoma, to commence operations on a channel that would clear the relocation of station KTLS(FM), Newcastle, Oklahoma. The Commission gave KIMY thirty (30) days from the date of its letter in which to commence operations on the channel that would clear KTLS. The Commission furthered ordered that on the thirtieth day, regardless of whether KIMY had commenced operations on the new channel, KTLS could commence program test operations with the parameters authorized by their construction permit. This was done notwithstanding potential for interference between KTLS and KIMY. JBC sought this remedy to permit WIFO-FM to begin operation on the higher class channel notwithstanding interference caused to WBTY. Southern opposes this proposed based on "substantial electrical interference" to be caused by the increased power of WIFO-FM.

JBC is sympathetic to Southern's being caught between JBC and Brooks. It appears that the culprit here is, indeed, Brooks. However, JBC maintains its request as set forth in the Emergency Request. As a practical matter, assuming favorable FCC action, it will be some months before WIFO-FM can begin operating as a Class C3 station since new equipment must be installed and tuned. It further appears that the Commission has failed to get Brooks' attention, so JBC respectfully suggests that the Commission send a letter to Brooks affording him 10 days to reimburse Southern for Southern's reasonable and prudent expenses incurred in achieving compliance with the *Report and Order*. Should Brooks not meet this deadline, the Commission

should begin a proceeding under Section 312 of the Communications Act of 1934, as amended<sup>6</sup>, to revoke the license of WVGA, Lakeland, Georgia, for failure to observe the provisions of the rule modified in the rule making proceeding (MM Docket No. 90-214). Nevertheless, JBC has made diligent efforts to resolve this matter. Until Southern hired learned counsel, no progress was made. Perhaps Southern's counsel will be able to persuade Brooks to honor his commitment. If not, the Commission should order WBTY to cease operating on Channel 288A, and if WBTY refuses, delete Condition No. 9 from JBC's construction permit, and permit WIFO to initiate program tests as a Class C3 station notwithstanding WBTY's continued operation on Channel 288A. JBC requests whatever special temporary authority may be required to achieve its goal.

Accordingly, JBC respectfully requests the Commission:

1. To send a letter to the licensee of WVGA, Lakeland, Georgia, advising him of his obligation to reimburse the Southern pursuant to the representations made in the rule making proceeding in MM Docket No. 90-214; and upon the failure of the licensee of WVGA within 10 days to reimburse Southern, to initiate a proceeding under Section 312(a) (4) of the Communications Act of 1934, as amended, to revoke the license of WVGA;<sup>7</sup> and
2. To order the licensee of WBTY, Homerville, Georgia, to immediately cease operation on Channel 288A, to relocate to Channel 254A, and permit WIFO-FM to commence program

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<sup>6</sup> Section 312(a)(1) provides that the Commission may revoke any station license or construction permit (1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to Section 308...and (4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act, or by a treaty ratified by the United States.

<sup>7</sup> Albert Leon Brooks has been added to the caption.

tests on 288C3 not withstanding interference that may arise from WBTY remaining on Channel 288A.

Respectfully submitted,

**JESUP BROADCASTING CORP.**

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: \_\_\_\_\_

Gary S. Smithwick  
Its Counsel

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December 4, 2000

## CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on this 4th day of December, 2000, a copy of the foregoing was sent via First Class Mail, postage pre-paid to:

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Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
The Portals II  
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Mr. Glenn Greisman\*\*  
Federal Communications Commission  
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P.O. Box 577  
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Mr. Albert Leon Brooks  
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Patricia A. Neil

\*\*by hand